

OPEN MEETING ITEM

COMMISSIONERS

Jim O'Connor – Chairman
Lea Márquez Peterson
Anna Tovar
Kevin Thompson
Nick Myers



ARIZONA CORPORATION COMMISSION

Kim Battista
Interim Executive Director

Jane Rodda
Hearing Division Director

DATE: JANUARY 31, 2023

DOCKET NO.: SW-02361A-22-0244

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Christopher Nichols. The recommendation has been filed in the form of an Order on:

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
(Exchange of Utility Assets)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by efilings at <https://efiling.azcc.gov/> or filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

FEBRUARY 10, 2023

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

FEBRUARY 22 AND 23, 2023

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Kim Battista

KIM BATTISTA
INTERIM EXECUTIVE DIRECTOR

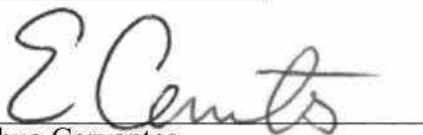
On this 31st day of January, 2023, the following document was filed with Docket Control as a Recommended Order from the Hearing Division, and copies of the document were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the filed document to the following who have consented to email service.

Kelly A. Daly
Paloma Scheiferstein
SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren St., Suite 1900
Phoenix, AZ 85004-2202
Attorneys for Liberty Utilities (Black Mountain Sewer) Corp.
kdaly@swlaw.com
pscheiferstein@swlaw.com
Consented to Service by Email

Todd Wiley
Liberty Utilities (Black Mountain Sewer) Corp.
14920 W. Camelback Rd.
Litchfield Park, AZ 85340
Attorney for Liberty Utilities (Black Mountain Sewer) Corp.

Robin Mitchell, Director
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007
LegalDiv@azcc.gov
utildivservicebyemail@azcc.gov
Consented to Service by Email

By:


Elishua Cervantes
Assistant to Christopher Nichols

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JIM O'CONNOR – CHAIRMAN
4 LEA MÁRQUEZ PETERSON
5 ANNA TOVAR
6 KEVIN THOMPSON
7 NICK MYERS

8 IN THE MATTER OF THE APPLICATION OF
9 LIBERTY UTILITIES (BLACK MOUNTAIN
10 SEWER) CORP. FOR APPROVAL OF
11 AUTHORITY TO EXCHANGE UTILITY ASSETS.

DOCKET NO. SW-02361A-22-0244

DECISION NO. _____

ORDER

12 Open Meeting
13 February 22–23, 2023
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

16 On September 9, 2022, Liberty Utilities (Black Mountain Sewer) Corp. (“Liberty Utilities” or
17 “Company”) filed an application (“Application”) with the Commission. The Application was
18 captioned, “In the Matter of the Application of Liberty Utilities (Black Mountain Sewer) Corp. for an
19 Extension of its Existing Certificate of Convenience and Necessity.” The Application stated:

20 Pursuant to A.R.S. § 40-285, Liberty Utilities (Black Mountain Sewer) Corp. (“Liberty
21 Black Mountain”) hereby submits this Application for Approval of Authority to
22 Exchange Utility Assets between Liberty Black Mountain and Carefree Water Company
23 (“CWC”). The contemplated equal property exchange of approximately 755 square feet
24 of land, which involves a Lot Line Adjustment (“LLA”), of the Peaceful Place Joint Use
25 Facility (the “Facility”) will benefit both Liberty Black Mountain and CWC, and allow
26 CWC to support its acquisition of 525 customers from Cave Creek Water. In this
27 exchange, Liberty Black Mountain and CWC include the exchange of all useful and/or
28 necessary assets, including Certificates of Convenience and Necessity (“CC&Ns”).

Also on September 9, 2022, Liberty Utilities filed an Amendment to its Application, amending
the caption to read, “In the Matter of the Application of Liberty Utilities (Black Mountain Sewer) Corp.
for Approval of Authority to Exchange Utility Assets.”

On October 11, 2022, the Commission’s Utilities Division (“Staff”) filed a Sufficiency Letter
stating that the Application had met the sufficiency requirements as outlined in Arizona Administrative
Code (“A.A.C.”) R14-2-602.

1 On October 17, 2022, by Procedural Order, a hearing in this matter was scheduled on January
2 12, 2023, and other procedural deadlines were set.

3 On November 1, 2022, Liberty Utilities filed a motion entitled Unopposed Proposed Changes
4 to the Procedural Order and Public Notice of Hearing (“Motion”). In its Motion, Liberty Utilities stated
5 that its Application does not seek to extend its existing CC&N. Rather, it seeks approval of authority
6 to exchange land with Carefree Water Company through a lot line adjustment of the Peaceful Place
7 Joint Use Facility. Liberty Utilities further stated that the subject area is entirely within its wastewater
8 CC&N. Liberty Utilities requested that the Public Notice of Hearing be amended accordingly, and
9 further requested that the October 17, 2022, Procedural Order be amended to strike the requirement
10 that the Public Notice of Hearing be mailed to each property owner in the affected service area.

11 On November 4, 2022, by Procedural Order, a telephonic procedural conference was scheduled
12 for November 8, 2022.

13 On November 8, 2022, the telephonic procedural conference was held as scheduled. During
14 the procedural conference, Liberty Utilities explained that the original caption, which stated that
15 Liberty was seeking an extension of its CC&N, was an error. Liberty Utilities further explained that
16 the language in its Application regarding “the exchange of all useful and/or necessary assets, including
17 Certificates of Convenience and Necessity,” was boilerplate language used for asset transfers including
18 CC&N transfers, but that language does not apply to this matter because the land at issue is all within
19 Liberty Utilities’ wastewater CC&N.

20 Also on November 8, 2022, following the procedural conference, Liberty Utilities filed an
21 amendment to its Application. Liberty Utilities stated that the amendment was to clarify that the
22 Application solely seeks approval of authority to exchange land with CWC and not an extension of its
23 CC&N. The amendment removed the language “including Certificates of Convenience and Necessity
24 (‘CC&Ns’)” from the Application.

25 On November 15, 2022, by Procedural Order, the procedural directives set forth in the October
26 17, 2022, procedural order were suspended and the January 12, 2023, hearing was vacated.

27 On December 1, 2022, Staff filed it Staff Report, recommending approval of the Exchange of
28 Utility Assets without a hearing.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission (“Commission”) finds, concludes, and orders that:

FINDINGS OF FACT

Background

1. Liberty Utilities is a Class C public service corporation certified to provide wastewater service in portions of Maricopa County, Arizona. The Company’s CC&N was originally granted by Decision No. 50544 (January 3, 1980). The Company currently serves approximately 2,244 wastewater customers.

2. The Company is not currently in compliance with Decision No. 76681 issued May 22, 2018, which approved the Company’s application to extend its CC&N to provide wastewater service to the Stagecreek Estates development. The Decision required the Company to file an Approval of Construction for the first parcel served in Stagecreek Estates by December 31, 2021, but the Company has not yet done so. On March 14, 2022, the Company filed a request to extend the deadline for five years due to developer-related delays.¹

Proposed Property Exchange

3. In its Application, Liberty Utilities requests authority to conduct an equal property exchange of land, involving a lot line adjustment, with Carefree Water Company (“CWC”).

4. CWC is owned and operated by the Town of Carefree (“Carefree” or “Town”).

5. The parcels of land to be exchanged (“Parcels”) are each approximately 755 square feet in size.

6. The Parcels are both located within the Peaceful Place Joint Use Facility (“Facility”) in Cave Creek, Arizona.

7. The Facility lies on approximately 0.208 acres of land and contains a lift station and a booster pump station.

8. Liberty Utilities owns approximately 0.15 acres of the Facility and the lift station. A

¹ Staff is in the process of reviewing the Company’s request.

1 legal description of the land currently owned by Liberty Utilities is attached hereto as Exhibit A and
2 incorporated by reference.

3 9. CWC owns the remaining 0.058 acres of the Facility and the booster pump station. A
4 legal description of the land currently owned by CWC is attached hereto as Exhibit B and incorporated
5 by reference.

6 10. The Facility is used by both Liberty Utilities and CWC to provide utility services to the
7 Town. Liberty Utilities uses the Facility to provide wastewater service to portions of the Town, while
8 CWC uses the Facility to provide water service.

9 11. CWC has determined that certain improvements to the Facility's booster pump station
10 are necessary to accommodate an additional 525 water customers that CWC is acquiring.

11 12. To facilitate the improvements to its booster pump station, CWC's design engineer has
12 recommended that CWC acquire a parcel of land currently owned by Liberty Utilities. A legal
13 description of the parcel CWC will acquire from Liberty Utilities is attached hereto as Exhibit C and
14 incorporated by reference.

15 13. In exchange, Liberty Utilities will acquire a parcel of land from CWC that will provide
16 the Company with access to the rear (east) portion of the Company's parcel. A legal description of the
17 parcel Liberty Utilities will acquire from CWC is attached hereto as Exhibit D and incorporated by
18 reference.

19 14. The Parcels have approximately equal values.

20 15. Other than the exchange of the Parcels, the proposed transaction does not impose any
21 terms or conditions on Liberty Utilities or CWC.

22 16. No financing will be required to exchange the Parcels.

23 17. The proposed asset exchange will not impact the Company's rates, service, or customers
24 in general.

25 18. The Parcels lie entirely within Liberty Utilities' current service area. Therefore, the
26 proposed asset exchange does not require an extension of Liberty Utilities' CC&N.

27 **Staff Recommendations**

28 19. Staff recommends that the Commission approve the proposed exchange of assets

between Liberty Utilities and CWC without additional public notice or a hearing.

20. As the proposed asset exchange will not adversely affect the ability of Liberty Utilities to provide service or the cost of service, we find that it is in the public interest and that Staff's recommendations are reasonable and should be adopted.

CONCLUSIONS OF LAW

1. Liberty Utilities is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-285.

2. The Commission has jurisdiction over Liberty Utilities and the subject matter of its Application.

3. Staff's recommendations are reasonable, in the public interest, and should be adopted.

ORDER

IT IS THEREFORE ORDERED that Liberty Utilities (Black Mountain Sewer) Corp.'s Application for Approval of Authority to Exchange Utility Assets is hereby approved.

IT IS FURTHER ORDERED that Liberty Utilities (Black Mountain Sewer) Corp. is hereby authorized to transfer the parcel described in Exhibit C to Carefree Water Company in exchange for the parcel described in Exhibit D.

IT IS FURTHER ORDERED that Liberty Utilities (Black Mountain Sewer) Corp. is authorized to engage in any transactions necessary to effectuate the authorization granted by this Decision, including but not limited to the lot line adjustment identified in the Application.

. . .

. . .

. . .

. . .

. . .

. . .

. . .

. . .

. . .

1 IT IS FURTHER ORDERED that Liberty Utilities (Black Mountain Sewer) Corp. shall file
2 with Docket Control, as a compliance item in this docket, within 90 days of the effective date of this
3 Decision, all pertinent documents evidencing the consummation of the exchange of assets authorized
4 by this Decision.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
7
8

9 CHAIRMAN O'CONNOR

COMMISSIONER MÁRQUEZ PETERSON

10
11 COMMISSIONER TOVAR

COMMISSIONER THOMPSON

COMMISSIONER MYERS

12
13
14 IN WITNESS WHEREOF, I, KIM BATTISTA, Interim
15 Executive Director of the Arizona Corporation Commission,
16 have hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this _____ day of _____ 2023.

17
18 KIM BATTISTA
19 INTERIM EXECUTIVE DIRECTOR

20 DISSENT _____

21
22 DISSENT _____
23 CAN/(gb)
24
25
26
27
28

SERVICE LIST FOR:

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER)
CORP.

DOCKET NO.:

SW-02361A-22-0244

Kelly A. Daly
Paloma Scheiferstein
SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren St., Suite 1900
Phoenix, AZ 85004-2202
Attorneys for Liberty Utilities (Black Mountain Sewer) Corp.
kdaly@swlaw.com
pscheiferstein@swlaw.com
Consented to Service by Email

Todd Wiley
Liberty Utilities (Black Mountain Sewer) Corp.
14920 W. Camelback Rd.
Litchfield Park, AZ 85340
Attorney for Liberty Utilities (Black Mountain Sewer) Corp.

Robin Mitchell, Director
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007
LegalDiv@azcc.gov
utildivservicebyemail@azcc.gov
Consented to Service by Email

Exhibit A

June 28, 2022

LEGAL DESCRIPTION FOR
PEACEFUL PLACE
PARENT PARCEL 2

That part of Lot 516 of Carefree Plat 3A Amended, as recorded in Book 96 of Maps, Page 13, Records of Maricopa County, Arizona, being situated in the Southeast Quarter of the Southeast Quarter of Section 34, Township 6 North, Range 4 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Westernmost Corner of said Lot 516;

Thence North 56°55'40" East (North 57°55'52" East, Record), along the Northwesterly line of said Lot 516, a distance of 67.90 feet to the True Point of Beginning;

Thence North 89°52'16" East (South 89°07'32" East, Record), along the North line of said Lot 516, a distance of 85.00 feet;

Thence South 30°40'44" West (South 31°40'56" West, Record), departing said North line, a distance of 105.35 feet;

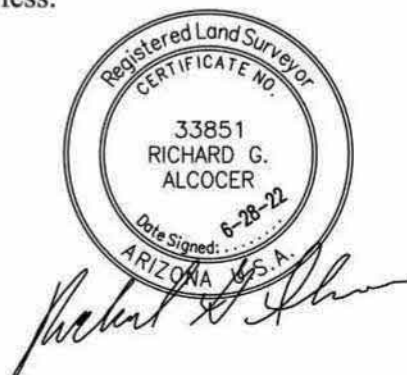
Thence South 75°35'40" West (South 76°35'52" West, Record), a distance of 60.00 feet to a point on the Westerly line of said Lot 516, said point being the beginning of a circular curve from which the radius point bears South 75°35'40" West, a distance of 230.00 feet;

Thence Northwesterly along said curve to the left, said curve being the Westerly line of said Lot 516, through a central angle of 06°02'03" a distance of 24.22 feet;

Thence North 71°09'48" East (North 72°10'00" East, Record), departing said Westerly line, a distance of 26.18 feet;

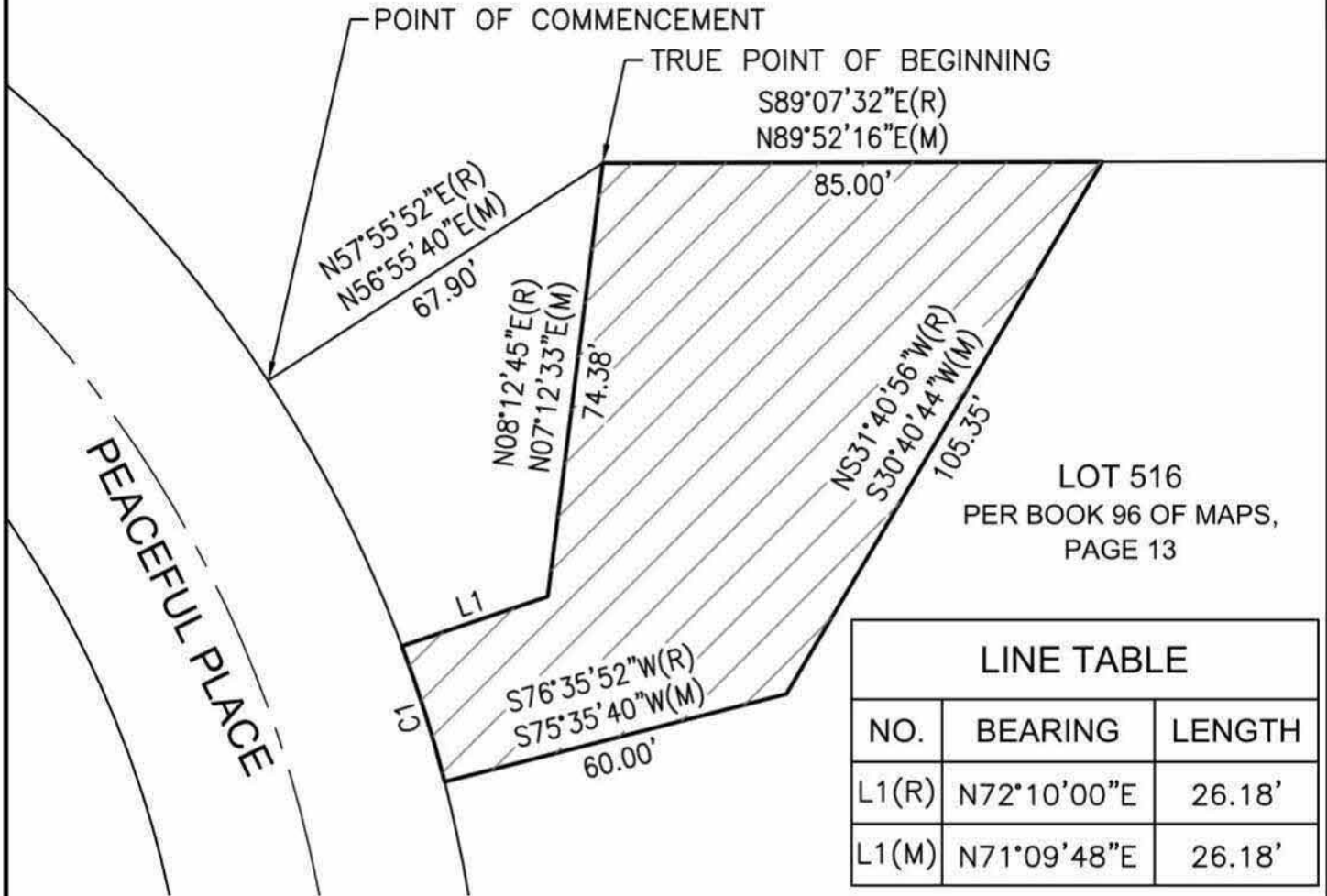
Thence North 07°23'33" East (North 08°23'45" East, Record), a distance of 74.38 feet to the True Point of Beginning.

Containing 6,518 Square Feet or 0.150 Acres, more or less.



CURVE TABLE

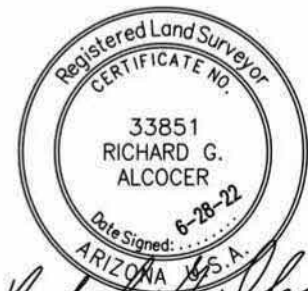
NO.	LENGTH	RADIUS	DELTA	TANGENT	CHORD	CHORD-BEARING
C1	24.22'	230.00'	006°01'58"	12.12'	24.21'	N17°25'20"W



LOT 516
PER BOOK 96 OF MAPS,
PAGE 13

LINE TABLE

NO.	BEARING	LENGTH
L1(R)	N72°10'00"E	26.18'
L1(M)	N71°09'48"E	26.18'



SCALE 1" = 30'

EXHIBIT

4550 North 12th Street
Phoenix, Arizona 85014
Phone 602-264-6831
<http://www.cvlci.com>

PEACEFUL PLACE

PARENT PARCEL 2



1 OF 1

Exhibit B

June 28, 2022

LEGAL DESCRIPTION FOR
PEACEFUL PLACE
PARENT PARCEL 1

That part of Lot 516 of Carefree Plat 3A Amended, as recorded in Book 96 of Maps, Page 13, Records of Maricopa County, Arizona, being situated in the Southeast Quarter of the Southeast Quarter of Section 34, Township 6 North, Range 4 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Beginning at the Northwest Corner of said Lot 516 coincident with the East line of Peaceful Place as recorded in said subdivision;

Thence North $56^{\circ}55'40''$ East (North $57^{\circ}55'52''$ East, Record), along the Northwesterly line of said Lot 516, a distance of 67.90 feet;

Thence North $89^{\circ}52'16''$ East (South $89^{\circ}07'32''$ East, Record), along the North line of said Lot 516, a distance of 85.00 feet;

Thence South $30^{\circ}40'44''$ West (South $31^{\circ}40'56''$ West, Record), departing said North line, a distance of 105.35 feet;

Thence South $75^{\circ}35'40''$ West (South $76^{\circ}35'52''$ West, Record), a distance of 60.00 feet;

Thence along the West line of said Lot 516 coincident with the East line of Peaceful Place along a curve concave to the Southwest containing a radius of 230.00 feet through a central angle of $18^{\circ}39'59''$ 74.93 feet ($18^{\circ}41'00''$ 75.00 feet, Record) to the Point of Beginning;

EXCEPT that portion described as follows:

Commencing at the Westernmost Corner of said Lot 516;

Thence North $56^{\circ}55'40''$ East (North $57^{\circ}55'52''$ East, Record), along the Northwesterly line of said Lot 516, a distance of 67.90 feet to the True Point of Beginning;

Thence North $89^{\circ}52'16''$ East (South $89^{\circ}07'32''$ East, Record), along the North line of said Lot 516, a distance of 85.00 feet;

Thence South $30^{\circ}40'44''$ West (South $31^{\circ}40'56''$ West, Record), departing said North line, a distance of 105.35 feet;

Thence South $75^{\circ}35'40''$ West (South $76^{\circ}35'52''$ West, Record), a distance of 60.00 feet to a point on the Westerly line of said Lot 516, said point being the beginning of a circular curve from which the radius point bears South $75^{\circ}35'40''$ West, a distance of 230.00 feet;

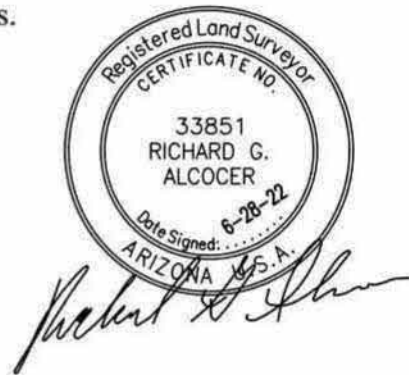
Legal Description for
Peaceful Place
Parent Parcel 1
June 28, 2022

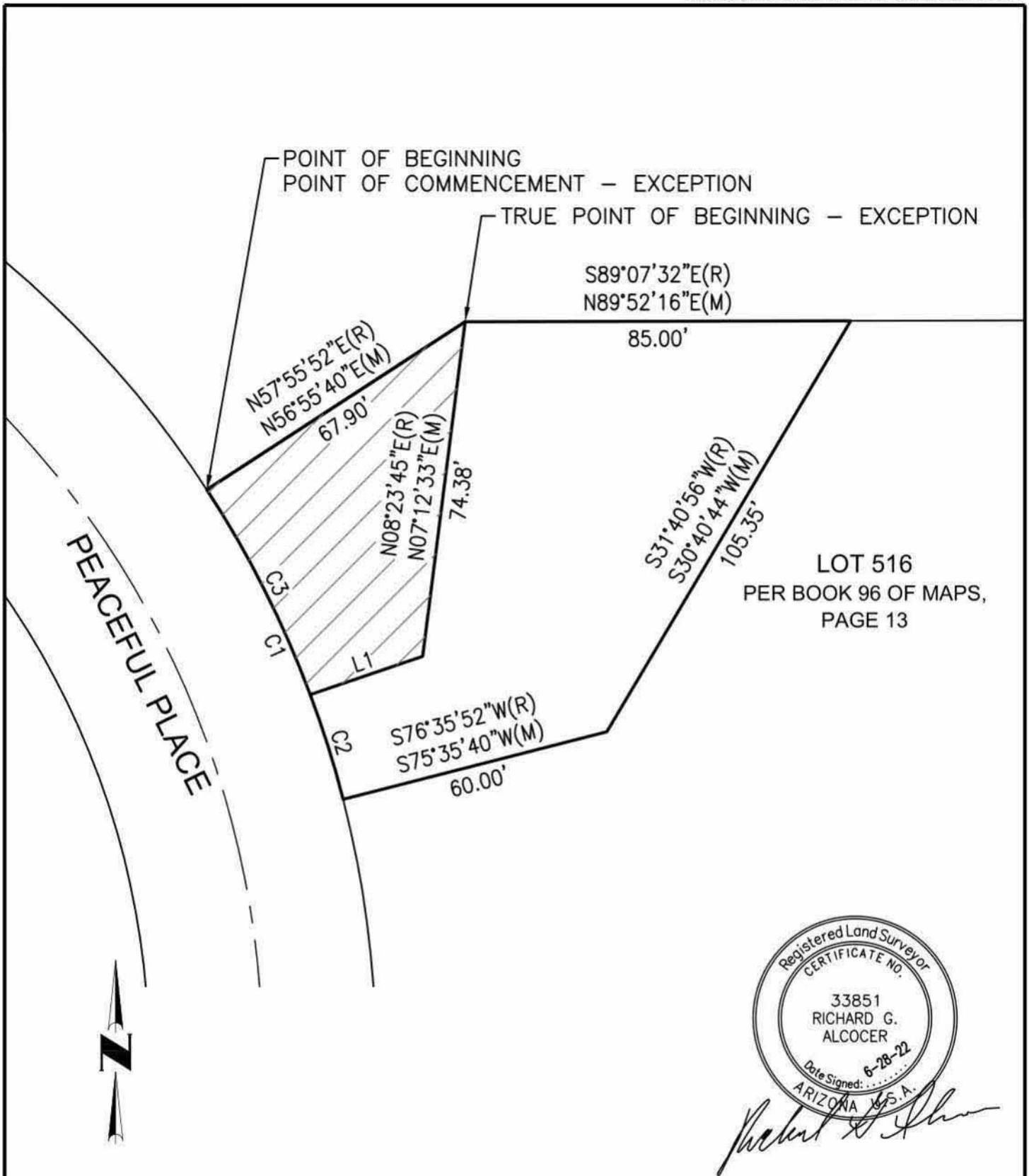
Thence Northwesterly along said curve to the left, said curve being the Westerly line of said Lot 516, through a central angle of $06^{\circ}02'03''$ a distance of 24.22 feet;

Thence North $71^{\circ}09'48''$ East (North $72^{\circ}10'00''$ East, Record), a distance of 26.18 feet;

Thence North $07^{\circ}12'33''$ East (North $08^{\circ}23'45''$ East, Record), a distance of 74.38 feet to the True Point of Beginning.

Containing 2,535 Square Feet or 0.058 Acres, more or less.






SCALE 1" = 30'	PEACEFUL PLACE	
EXHIBIT		
4550 North 12th Street Phoenix, Arizona 85014 Phone 602-264-6831 http://www.cvlci.com	PARENT PARCEL 1	1 OF 2

Exhibit C

June 28, 2022

LEGAL DESCRIPTION FOR
PEACEFUL PLACE
SUBJECT PARCEL 1A

That part of Lot 516 of Carefree Plat 3A Amended, as recorded in Book 96 of Maps, Page 13, Records of Maricopa County, Arizona, being situated in the Southeast Quarter of the Southeast Quarter of Section 34, Township 6 North, Range 4 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the 1" Iron Pipe with Tag LS#33851 marking the Westernmost Corner of said Lot 516;

Thence North $56^{\circ}55'40''$ East, along the Northwesternly line of said Lot 516, a distance of 67.90 feet;

Thence South $07^{\circ}12'33''$ West, departing said Northwesternly line, a distance of 15.73 feet to the True Point of Beginning;

Thence North $89^{\circ}52'16''$ East, a distance of 2.18 feet;
Thence South $17^{\circ}26'25''$ East, a distance of 52.01 feet;
Thence South $71^{\circ}09'48''$ West, a distance of 26.55 feet;

Thence North $07^{\circ}12'33''$ East, a distance of 58.65 feet to the True Point of Beginning.

Containing 754 Square Feet or 0.017 Acres, more or less.



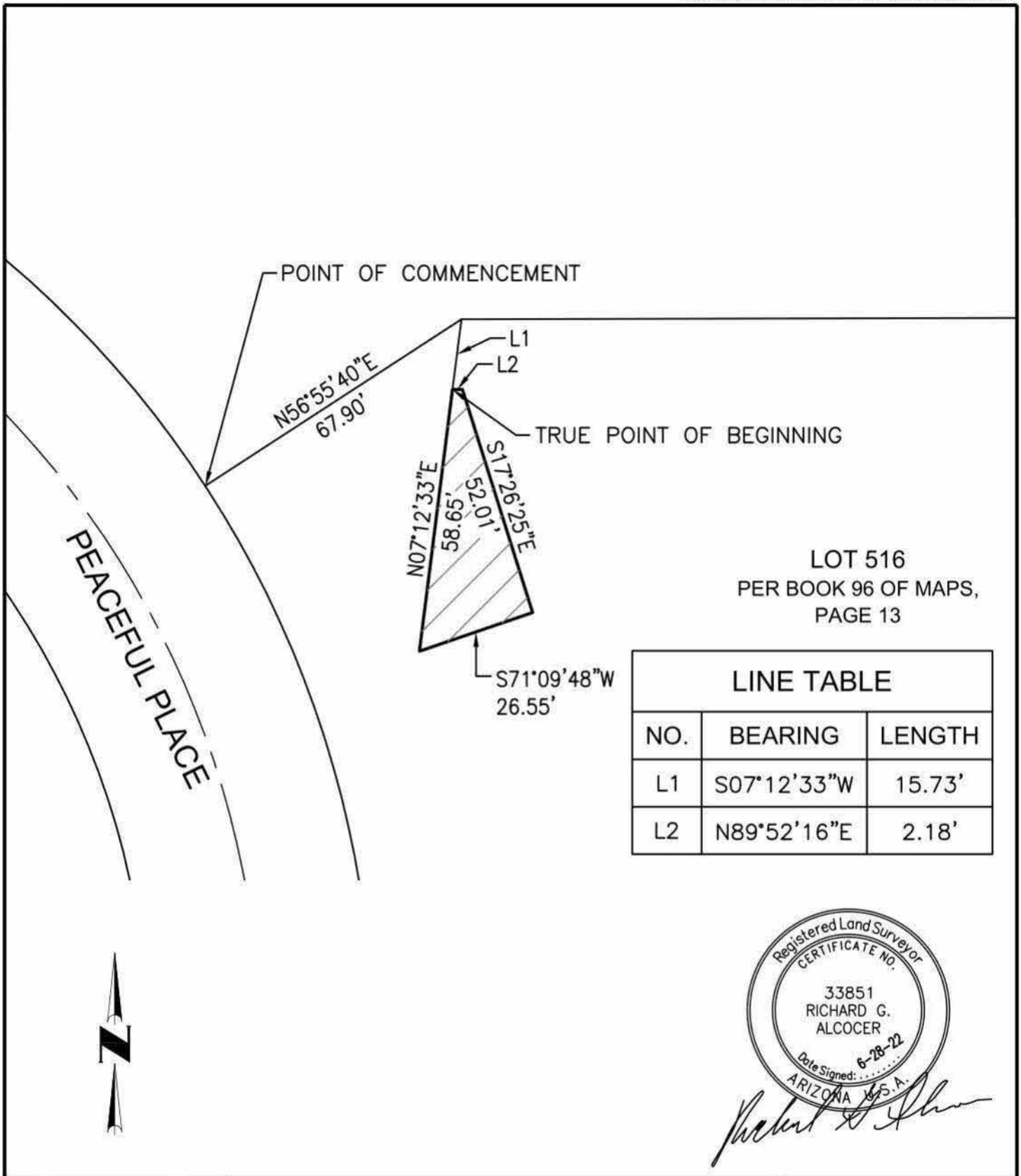


Exhibit D

June 28, 2022

LEGAL DESCRIPTION FOR
PEACEFUL PLACE
SUBJECT PARCEL 2A

That part of Lot 516 of Carefree Plat 3A Amended, as recorded in Book 96 of Maps, Page 13, Records of Maricopa County, Arizona, being situated in the Southeast Quarter of the Southeast Quarter of Section 34, Township 6 North, Range 4 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Beginning at the 1" Iron Pipe with Tag LS#33851 marking the Westernmost Corner of said Lot 516;

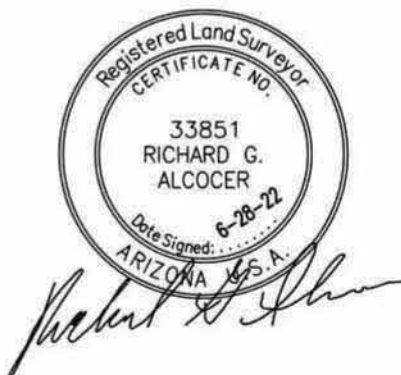
Thence North $56^{\circ}55'40''$ East, along the Northwesternly line of said Lot 516, a distance of 67.90 feet;

Thence South $07^{\circ}12'33''$ West, departing said Northwesternly line, a distance of 15.73 feet;

Thence South $56^{\circ}55'40''$ West, a distance of 58.04 feet to a point on the Southwesterly line of said Lot 516, being on a 230.00 foot radius non-tangent curve, whose center bears South $59^{\circ}55'07''$ West;

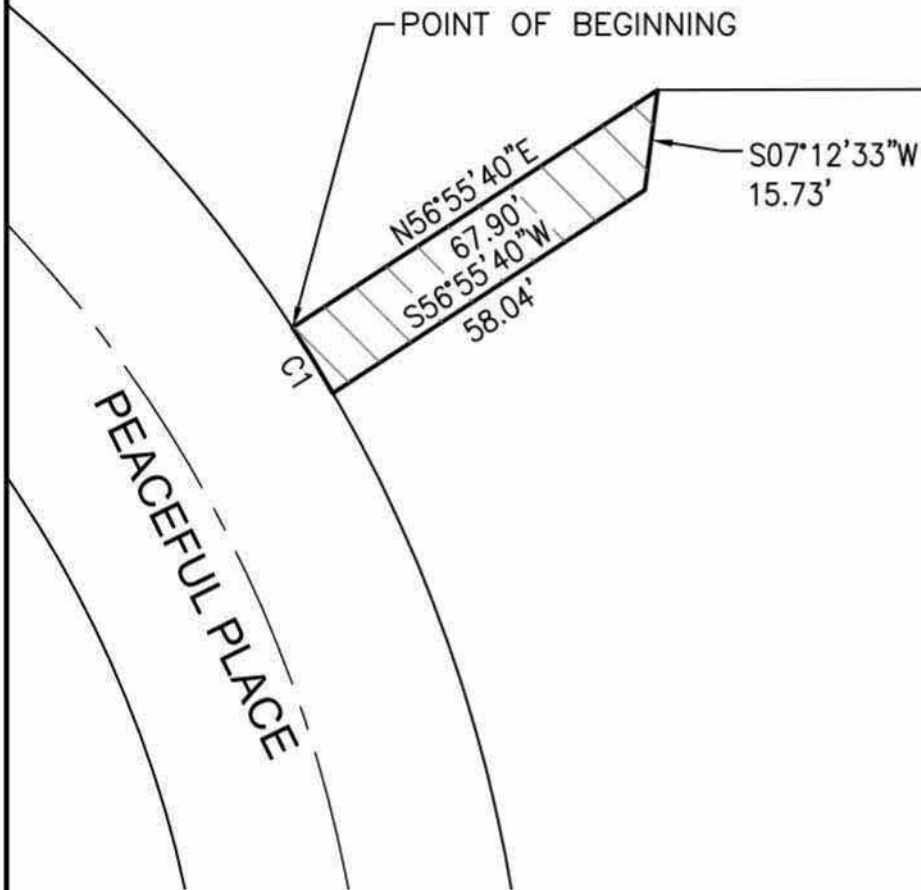
Thence Northwesternly, along said curve, through a central angle of $02^{\circ}59'27''$, a distance of 12.01 feet to the True Point of Beginning.

Containing 755 Square Feet or 0.017 Acres, more or less.



CURVE TABLE

NO.	LENGTH	RADIUS	DELTA	TANGENT	CHORD	CHORD-BEARING
C1	12.01'	230.00'	002°59'27"	6.00'	12.00'	N31°34'37"W



LOT 516
PER BOOK 96 OF MAPS,
PAGE 13



SCALE 1" = 30'

EXHIBIT

4550 North 12th Street
Phoenix, Arizona 85014
Phone 602-264-6831
<http://www.cvlci.com>

PEACEFUL PLACE

SUBJECT PARCEL 2A



1 OF 1